



Federal Communications Commission
Washington, D.C. 20554

July 12, 2005

DA 05-1969
In Reply Refer to:
1800B3-SS

Mr. Vernon T. Snyder
WTL Communications, Inc.
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Mr. Skip Haymans
Blue Lake Academy, Inc.
3551 East Orange Avenue
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In re: NEW LPFM Application, Eustis, FL
Blue Lake Academy, Inc.
Facility ID No. 133064
File No. BNPL-20010613AFU

NEW LPFM Application, Umatilla, FL
Communication Arts Center, Inc.
Facility ID No. 134390
File No. BNPL-20010612AEV

NEW LPFM Application, Lady Lake, FL
Best of Life Educational Services, Inc.
Facility ID No. 134960
File No. BNPL-20010615ADM

Dear Messrs. Snyder, Martin and Haymans:

The Bureau has before it the captioned, mutually exclusive applications of Blue Lake Academy, Inc. ("Blue Lake") and Communication Arts Center, Inc. ("CAC") seeking Low Power FM ("LPFM") construction permits in the Eustis, Florida, area.¹ Additionally, the Bureau has before it: (1) a timely December 6, 2004 Petition for Reconsideration filed by Best of Life Educational Services, Inc. ("BOL"), seeking reinstatement of its application for a new LPFM station in Lady Lake, Florida, which was

¹ The application of Lake County Community Media Association's application (File No. BNPL-20010615AZM) was dismissed by Bureau staff on October 12, 2004.

dismissed by the Bureau on November 1, 2004, as inadvertently accepted for filing;² and (2) BOL's December 16, 2004, informal objection to the Blue Lake application. In accordance with established procedures,³ the Commission previously published notice of the applications' tentative selectee status.⁴ For the reasons set forth herein, we deny the BOL petition for reconsideration and grant the BOL informal objection to the extent indicated, dismiss the Blue Lake application, and grant the CAC application.

BOL Petition for Reconsideration. BOL filed the captioned application on June 15, 2001, claiming to be "a non-stock, not-for-profit corporation organized under the laws of the State of Florida."⁵ On May 7, 2004, WTL submitted an informal objection to the application, claiming that BOL was not a legal entity in the State of Florida. BOL filed no response to the objection. Our review of the record revealed that BOL was not incorporated on June 15, 2001, when it filed the subject application. Accordingly, on November 1, 2004, we dismissed BOL's application as being inadvertently accepted for filing and dismissed WTL's objection as moot.

The Commission will consider a Petition for Reconsideration when petitioner shows either a material error in the Commission's original order, or raises additional facts not known or existing at the time of petitioner's last opportunity to present such matters.⁶ BOL's petition alleges that the dismissal of the original application was in error because the staff's decision was too narrowly drawn and is contrary to Commission precedent on the issue of corporate qualifications of broadcast applicants.

According to the Commission's rules and procedures for LPFM applications, an applicant for an LPFM station must certify its eligibility to own and operate such station at the time it files its application.⁷ Section 73.853 of the Commission's rules states that an LPFM station may be licensed to a noncommercial educational ("NCE") organization for the advancement of an educational program. The *LPFM Report and Order* states that the establishment of LPFM as a noncommercial service requires that LPFM licensees comply with the eligibility requirements of Section 397(6) of the Communications Act.⁸ Section 397(6) of the Act defines a "noncommercial educational broadcast station" as a station which "(A) . . . is owned and operated by a public agency or nonprofit private foundation, corporation, or association. . . ."⁹ Because individuals are not eligible to own and operate LPFM stations,¹⁰ the

² See *Letter to Vernon T. Snyder and Donald E. Martin, Esq.*, Reference 1800B3-SS (Audio Division, Media Bureau, Nov. 1, 2004) ("Staff Decision"). WTL Communications, Inc. ("WTL") filed an informal objection against BOL's application on May 7, 2004. In its November 1, 2004 Staff Decision, the Bureau also dismissed the WTL informal objection as moot.

³ See *Creation of a Low Power Radio Service, Report & Order*, 15 FCC Rcd 2205 (2000) ("*LPFM Report and Order*"); *Creation of a Low Power Radio Service, Memorandum Opinion & Order on Reconsideration*, 15 FCC Rcd 19208 (2000); and *Creation of Low Power Radio Service, Second Report & Order*, 16 FCC Rcd 8026 (2001).

⁴ See *Public Notice, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, DA 04-679, (rel. Mar. 12, 2004).

⁵ See File No. BNPL-20010615ADM at Exhibit 2.

⁶ 47 C.F.R. §1.106, and *WWIZ, Inc.*, 37 F.C.C. 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

⁷ See Instructions for FCC Form 318, Section II, Question 2. See also FCC Form 318, Section II, Question 2.

⁸ *LPFM Report and Order*, 15 FCC Rcd at 2213.

⁹ 47 U.S.C. §397(6).

certification requires that the applicant be a noncommercial educational institution, corporation, or entity that is recognized under state law.¹¹ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under the laws of the state in which it proposes to operate an LPFM station at the time its application is submitted.¹² Section II, Question 2 requires corporate applicants to provide an exhibit with the state and date of their incorporation.¹³ Additionally, the instructions to FCC Form 318, Section II, Question 2, Subsection 2(b) regarding nonprofit educational organizations states, “Applicants must be prepared to furnish supporting documentation for their statements upon request by the Commission staff.” The record is clear in this case that BOL was not incorporated on June 15, 2001, when it filed the subject application.

BOL claims in its petition that this “oversight is in the process of being corrected and [BOL] will promptly be a corporation in good standing.”¹⁴ However, it does not dispute the fact that it was not incorporated when it filed the application in June of 2001, and, in fact, there is no evidence in the Florida Secretary of State database of corporations that BOL was ever incorporated.¹⁵ Thus, the staff dismissal of BOL’s original application was proper.

BOL also argues in its petition for reconsideration that the staff’s dismissal of BOL’s application is at odds with a general Commission policy of leniency where a “corporate applicant has experienced lapses in its formal technical existence.”¹⁶ BOL refers to a number of cases where the Commission refrained from questioning the legal viability of an “entity.”¹⁷ We reject BOL’s assertion that we should be unconcerned with an applicant’s organizational status in the context of the NCE LPFM service. Initially, we note that BOL has not “experienced a lapse in its formal technical existence,” but apparently has never been formally incorporated at all. Additionally, the majority of cases cited by BOL involve a commercial applicant or licensee. In this case, BOL is not an “entity” recognized by any state, and it is an NCE applicant. Although the Commission generally will not deny an application for a commercial broadcast facility based on a licensee’s or permittee’s non-compliance with state corporate law “when no challenge has been made in the State Courts and the determination is one that is more appropriately a

¹⁰ *LPFM Report and Order*, 15 FCC Rcd 2205 at paragraph 20, footnote 40. *See also* Instructions for FCC Form 318, Section II, Question 2(b).

¹¹ *Id.* at paragraph 18 and 19. *See also* Communications Act of 1934 §397(6)(A).

¹² The Commission restricted the initial LPFM filing windows to “local” applicants. 47 C.F.R. § 73.853(b). *See also*, *LPFM Report and Order*, 15 FCC Rcd at 2215.

¹³ *See* FCC Form 318, Section II, Question 2, note.

¹⁴ *See* n. 7, *supra*..

¹⁵ Florida Secretary of State website, <http://www.sunbiz.org/corpweb/inquiry/cormenu.html>, visited June 6, 2005.

¹⁶ *See* BOL petition for reconsideration at 2-3.

¹⁷ *See id.*; *see also e.g., Abundant Life, Inc.*, 16 FCC Rcd 4972 (2001), *appeal dismissed sub. nom., Unity Broadcasters v. FCC*, Case No. 01-1148 (D.C. Cir. 2002) (evidence submitted by a commercial broadcaster in support of the accuracy and candor of a certification may fully resolve any questions concerning that certification); *Aspen FM, Inc.*, 12 FCC Rcd 17852 (1997) (for-profit corporate entity contends that its status was suspended, not terminated, under state law and that it could have revived itself by paying the back taxes); *North American Broadcasting Co., Inc.*, 15 F.C.C.2d 979 (Rev. Bd. 1969); and *Fatima Response, Inc.* 14 FCC Rcd 18543 (1999) (no misrepresentation found where petitioner had shown no evidence that the permittee of an NCE station knowingly misrepresented its corporate status).

matter of state resolution,”¹⁸ a corporation’s existence can be a relevant Commission inquiry,¹⁹ and it is a relevant inquiry in the LPFM context. The Communications Act states that NCE stations such as those in the LPFM service are licensed to a “public agency or nonprofit private foundation, corporation, or association.” The commercial broadcast service contains no such stipulation, and businesses in any form (*i.e.*, corporation, partnership, sole proprietorship, or individual) may use commercial broadcast channels.²⁰ Moreover, the rules and form instructions outlined above specifically require that NCE applicants be organized in some identifiable form, *i.e.*, as an “entity” recognized by the appropriate state at the time of filing.²¹ Because LPFM applicants must be organized in a form recognized by the appropriate state, the staff properly exercised its discretion in considering the evidence concerning BOL’s apparent failure to incorporate prior to filing its application. We will therefore deny BOL’s petition for reconsideration.

BOL Informal Objection/Blue Lake Application. BOL argues that Blue Lake’s application is defective and should be dismissed because it was not signed in accordance with Section 73.3513 of the Commission’s rules.²² Section 73.3513(a)(3) of the Commission’s rules clearly states that a filed application of a corporation, such as Blue Lake, “must be signed . . . [by] a member who is an officer. . . .”²³

A review of the record indicates that Blue Lake’s captioned application was signed by “James R. Powers,” who identifies himself as “Station Manager – Program Director.”²⁴ Further review of the record indicates that Mr. Powers is not listed as either an officer, director, or board member of Blue Lake.²⁵ Accordingly, the Blue Lake application must be dismissed.

¹⁸ See *Abundant Life, Inc.*, 14 FCC Rcd at 4973; *Fatima Response, Inc.*, 14 FCC Rcd at 18546; and *North American Broadcasting Co., Inc.*, 15 F.C.C.2d at 983.

¹⁹ See *Cosmopolitan Enterprises, Inc.*, 47 F.C.C.2d 325, 326 (1974) (matters subsequently coming to the attention of the Commission that raise serious questions as to whether the applicant possesses the requisite qualifications to remain a permittee or to become a licensee are cause for an application to be designated for hearing).

²⁰ Thus, that an applicant’s corporate status under state law has lapsed does not establish that the entity is no longer conducting eligible business activities. See, *e.g.*, *Amalgamated Sugar et al.*, 19 FCC Rcd 2698, 2699 (WTB 2004).

²¹ See n.12 and n.13, *supra*. See also *Westchester Council for Public Broadcasting*, 8 FCC Rcd 2213, 2214 (1993) (NCE application dismissed for, *inter alia*, failing to provide required information regarding legal status of corporate applicant in case where purported corporate applicant was not incorporated at the time of filing). In *Fatima Response, Inc.*, which also involved an NCE station, the Commission addressed the issue of whether the permittee had misrepresented its corporate status in its original application, not whether the Commission could properly inquire into corporate status. The Commission held that petitioner presented no evidence that the permittee knowingly misrepresented its corporate status, and also stated that it would not deny the assignment application of a self-described *de facto* California corporation when that status had not been challenged in state court. *Fatima Response, Inc.*, 14 FCC Rcd at 18546, referenced in *Abundant Life, Inc.*, 16 FCC Rcd at 4974. There is no evidence in the record here that BOL has any legally recognized status in Florida.

²² See BOL Informal Objection (filed Dec. 16, 2004) at 1-2.

²³ See 47 C.F.R. § 73.3513; see also *Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991) and *Central Florida Communications Group, Inc., et al.*, 6 FCC Rcd 522, 523 (1991).

²⁴ See File No. BNPL-20010613AFU at 6.

²⁵ See *id.* at 2-3.

Conclusion. CAC is the only remaining application in LPFM Mutually Exclusive Group 21. We have examined the CAC proposal and find that it complies with all pertinent statutory and regulatory requirements and that grant of CAC's application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that the December 6, 2004, Petition for Reconsideration filed by Best of Life Educational Services, Inc., IS HEREBY DENIED. IT IS FURTHER ORDERED, pursuant to Section 73.3513(a)(3) of the Commission's rules, that the application filed by Blue Lake Academy, Inc. (File No. BNPL-20010613AFU) IS DISMISSED AS INADVERTENTLY ACCEPTED FOR FILING, and the December 16, 2004, informal objection filed by Best of Life Educational Services, Inc. IS DISMISSED as moot.

Accordingly, IT IS FURTHER ORDERED that the application of Communication Arts Center, Inc. (File No. BNPL-20010612AEV) IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Best of Life Educational Services, Inc.
Communication Arts Center, Inc.